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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/605,882      | 06/29/2000  | Pierre Rebreyend     | Q59812              | 7302             |

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EXAMINER

HOFFMANN, JOHN M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1731

DATE MAILED: 04/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/605,882

Applicant(s)

REBREYEND ET AL.

Examiner

John Hoffmann

Art Unit

1731

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 4-4-03 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 9-11, 15 and 16.

Claim(s) withdrawn from consideration: 8 and 12-14.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s).
10. ☒ Other: See Continuation Sheet

John Hoffmann  
Primary Examiner

4-15-03

Continuation of 2. NOTE: The new issues: whether claim 9 would be indefinite as to being unclear whether the method must be free of silica particles- or merely whether the means for injecting must merely be capable of being used free of silica particles; and whether the new "free of silica particles" would make the claims allowable..

Continuation of 5. It is argued that the prior art does not teach the glazing operation of the present invention. The prior art methods meet nearly every accepted meaning for "glazing" for example: To furnish or fit with glass; to coat with or as if with a glaze; to apply a glaze to. One of ordinary skill would immediately realize that the prior art method clearly glazes the preform - because the preform is furnished with a glass coating - a glaze. No argument is given which indicates why Applicant considers that the method of the prior art does not glaze the preform - thus Examiner doesn't know how to further explain how the claim language is met. AS to the arguments regarding the gas being free of silica particles. In as much as page 5 lines 18-19 of Paper #10 (10-09-2002) indicates that Applicant holds the source of the gas being particle-free, Examiner will interpret present claim 16 as reading on having the source being particle free. The arguments regarding the newly added limitations are not relevant because the amendments are not entered.

Continuation of 10: Regarding the election/restriction: MPEP818.03(a) states: "A mere broad allegation that the requirement is in error does not comply with the requirement of 37 CFR § 1.111. Thus the required provisional election becomes an election without traverse." As indicated in Paper #8, the Office took the position that Applicant's election was made without traverse - thus arguments regarding the propriety of the original requirement are moot. Any argument to the original requirement is now untimely. The arguments are also moot, because the original claims have been cancelled.

As to the present claims: Claim 8 is distinct from the method claims (claim 9-12 and 15-16) because the torch of claim 8 could be used in nearly any method requiring heat, such as boiling water, sintering a powder metallurgy item, or destroying bio-medical waste. Claim 8 would be classified in class 239. Likewise the other apparatus claims (see claim 13-14) could used with a materially different method - such as anodizing a metal bar, or where the means for causing the torch to inject is used to supply a reactant- rather than cool the plasma power. Other differences exist -such as the means for holding the preform at both ends and the means for moving the preform.

It is argued that claim 13 is directed to something different from the non-elected invention of original claim 6: Claim 13 and original claim 6 are both directed to a system for making a fiber preform - it does not matter that the two claims are not identical.